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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,

No. 11-CR-331 MMC

12 Plaintiff,

**ORDER AFFORDING GOVERNMENT
LEAVE TO FILE MOTION FOR WAIVER
OF ATTORNEY-CLIENT PRIVILEGE**

13 v.

14 PETE AGAPITO CHAVEZ,

15 Defendant.
16 _____/

17 Before the court is defendant Pete Agapito Chavez's ("Chavez") "Application
18 Seeking Habeas Relief Pursuant to 28 U.S.C. § 2255," (hereinafter "Motion"), filed May 8,
19 2013, by which Chavez raises four claims. By order filed May 24, 2013 (see Doc. No. 69),
20 the Court dismissed the first three claims and directed the government to file a response to
21 the fourth, a claim alleging ineffective assistance of counsel. The government
22 subsequently filed its opposition, to which Chavez replied. Thereafter, by order filed
23 October 15, 2014 (see Doc. No. 87), the Court afforded Chavez leave to file a declaration,
24 signed under penalty of perjury, setting forth in detail the facts on which he bases his
25 motion, after which Chavez, on November 5, 2014, filed a declaration and the government,
26 on January 29, 2015, responded.

27 In its January 29, 2015 response, the government states it has been unable to
28 obtain declarations from the two attorneys who Chavez asserts provided ineffective
assistance, Steven Kalar ("Kalar") and Martin Sabelli ("Sabelli"), because, according to the

1 government, neither attorney would give a declaration absent a court order finding the
2 attorney-client privilege has been waived as to Chavez's ineffective assistance claim.
3 Although the government, pointing to evidence it did submit with its January 29, 2015
4 response, also argues the record is sufficiently developed without additional
5 supplementation, such evidence does not address all of the issues raised in support of
6 Chavez's claim. In particular, the evidence submitted does not address Chavez's
7 allegation that Kalar failed to obtain a critical videotape¹ and his allegation that Sabelli, after
8 having been requested to do so, failed to file a notice of appeal.

9 Accordingly, the Court will afford the government leave to file, no later than March
10 20, 2015, a motion for a finding of a limited waiver of the attorney-client privilege. In the
11 absence of such filing, the Court will proceed to appoint counsel for Chavez and set a
12 status conference in order to discuss the scheduling of an evidentiary hearing.

13 **IT IS SO ORDERED.**

14 Dated: February 17, 2015

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16 MAXINE M. CHESNEY
17 United States District Judge
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24 ¹The Court notes that Chavez's November 5, 2014 declaration states generally that
25 Kalar failed to "request[] a suppression hearing" (see Doc. No. 89 ¶ 5), whereas the
26 attestation under "penalty of perjury" contained in his motion (see Doc. No. 68), which
27 specifies the importance of the videotape to the subject search, is, as the government
28 points out, deficient for lack of a date of execution. Given the significance of the allegation,
however, the Court does not find it appropriate to deny the claim on the basis of such
procedural deficiency.